

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANTAO SU,

CASE NO. 5:10-cv-04194 EJD

Plaintiff(s),

**ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT
AND DEFAULT JUDGMENT; ORDER
FOR SERVICE OF PROCESS**

v.

DEFENSE LANGUAGE INSTITUTE
FOREIGN LANGUAGE CENTER, et. al.,

[Docket Item No(s). 36]

Defendant(s).

Presently before the court is Plaintiff Dantao Su's ("Plaintiff") Motion for Entry of Default and Default Judgment against Defendant Defense Language Institute Foreign Language Center ("Defendant"). See Docket Item No. 36. This is Plaintiff's fifth request seeking similar relief. See Docket Item Nos. 6, 10, 19, 28, 36. In this motion, Plaintiff contends, as she has in previous filings, that Defendant was properly served but failed to respond. She further contends that service on Defendant itself was sufficient because Defendant is not a federal agency. Thus, Plaintiff argues that service of process need not be accomplished pursuant to the provisions of Federal Rule of Civil Procedure 4(i), which requires that Plaintiff deliver a copy of the summons and complaint by registered or certified mail to: (1) the United States Attorney for the district in which the action is brought and (2) to the Attorney General of the United States in Washington D.C.

The problem with Plaintiff's contention is twofold. First, Plaintiff herself has recognized

Defendant's federal status and cited it in the Complaint's jurisdictional statement in order to support jurisdiction under 28 U.S.C. § 1346. See Docket Item No. 1, at ¶ 1 ("This court has jurisdiction over this complaint because defendant is a federal government agency . . ."). Second, Defendant's status as a federal agency would form the sole basis of subject matter jurisdiction over this case if the court were to address Plaintiff's motion on the merits since a cognizable claim under a federal statute has not been alleged in order to support jurisdiction under 28 U.S.C. § 1331. If Defendant is not a federal agency, then this court lacks the subject matter jurisdiction necessary to proceed with entry of default and default judgment.

In light of these circumstances and considering Plaintiff has asserted that Defendant is a federal agency, the court will order service consistent with Federal Rule of Civil Procedure 4(i). Plaintiff's present motion will be denied since proper service on Defendant has not yet been accomplished.

Based on the foregoing, the court orders as follows:

1. Plaintiff's Motion for Entry of Default and Default Judgment (Docket Item No. 36) is DENIED.
2. **No later than October 5, 2012**, Plaintiff shall prepare and provide to the Clerk's Office two Summons (Form AO-440) forms: one for the United States Attorney for the Northern District of California and one for the United States Attorney General. A copy of Form AO-440 is attached to this Order.
3. Once the Summons forms are provided to the Clerk's Office by Plaintiff, the clerk shall serve the United States Attorney and the Attorney General by either providing a copy of the Summons and Complaint to the U.S. Marshal for service or by serving directly the United States Attorney and the Attorney General according to the provisions of Federal Rule of Civil Procedure 4(i).

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4. Plaintiff is advised that failure to comply as directed herein may result in an order dismissing this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: September 19, 2012


EDWARD J. DAVILA
United States District Judge

United States District Court
For the Northern District of California

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Plaintiff

v.

Defendant

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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset